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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Serial No. 75/321,127
Mark: GT SNO RACER BY MURRAY
Published: May 4, 1999



05-24-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

GT BICYCLES, INC.,

Opposer,

v.

MURRAY, INC.,

Applicant.

Opposition No. 114,762

TRADEMARK TRIAL AND
APPEAL BOARD
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MOTION TO DISMISS FOR FAILURE TO PROSECUTE

Pursuant to Rule 2.132 of the Trademark Rules of Practice, Applicant hereby moves that the above-referenced Opposition be dismissed with prejudice due to the failure of Opposer to prosecute this case. As grounds for this motion, Applicant states as follows:

1. In its Scheduling Order issued August 24, 2001, the Trademark Trial and Appeal Board ordered that discovery in this case was to close on January 23, 2002; Opposer's testimony period was to close on April 23, 2002; and Applicant's testimony period was to close on June 22, 2002.

2. Opposer has taken no discovery in this case, nor has Opposer taken any testimony in this case. Further, Opposer has not submitted any evidence in this case, whether in the form of testimony, a notice of reliance, or a status and title copy of a registration issued by the U.S. Patent and Trademark Office, or any other U.S.P.T.O. records. Although Opposer did attach a

photocopy of a purported trademark registration to its Notice of Opposition, this was insufficient to place the registration in evidence under Rule 2.122(d) of the Trademark Rules of Practice.

3. Rule 2.132 of the Trademark Rules of Practice provides that, if the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute.

4. Rule 2.132(c) of the Trademark Rules of Practice provides that a motion filed under Rule 2.132(a) must be filed before the opening of the testimony period of the moving party. Here, Applicant's testimony period opened on May 23, 2002, one day ago. However, Rule 2.132(c) further provides that the Board may, in its discretion, grant a motion under Rule 2.132(a) even if the motion was filed after the opening of the testimony of the moving party. The Board should exercise its discretion in Applicant's favor in this case and grant this Motion to Dismiss for the following reasons:

(a) since Applicant's testimony period opened only yesterday, there is no prejudice to either party or to the efficient operation of the Board's docket;

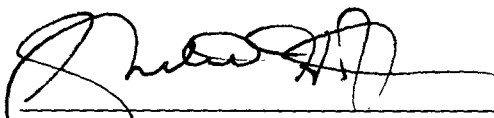
(b) by virtue of the fact that Opposer not only failed to take testimony or offer any other evidence, but also failed to take any discovery, it is clear that Opposer has probably abandoned all interest in this proceeding and has, in any event, forfeited its right to further delay the issuance of Applicant's registration;

(c) since Opposer has offered no evidence and the time within which Opposer could offer any evidence has passed, it is clear that Applicant will prevail on the merits if this case continues to Applicant's testimony phase and the briefing and oral argument phase; and

(d) justice as well as judicial economy will be served by disposing of this case in the requested summary fashion.

In view of the foregoing, it is respectfully requested that this Motion be granted and that the Opposition be dismissed with prejudice. In the event this Motion is denied, it is requested that the Board reset the testimony periods for Applicant and for rebuttal.

Respectfully submitted,



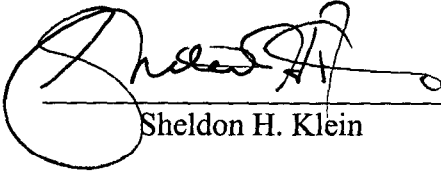
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Date: May 24, 2002

Attorney for Applicant Murray, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "MOTION TO DISMISS FOR FAILURE TO PROSECUTE" was served on counsel for GT Bicycles, Inc., Kit M. Stetina, Esq., Stetina Brunda Garred & Brucker, 24221 Calle De la Louisa, 4th Floor, Laguna Hills, California 92653-3642, via First Class Mail, postage prepaid, this 24th day of May 2002.



Sheldon H. Klein

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